Fiber-Lam, Inc. *and* United Paperworkers International Union, AFL–CIO, CLC, Petitioner. Case 5–RC–13224

January 11, 1991

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held June 2, 1989, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 6 for and 27 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the Regional Director's findings and recommendations only to the extent consistent with this decision and finds that a certification of results of election should be issued.[1]

In support of its Objections 1 through 3, the Petitioner submitted various campaign leaflets which the Employer had distributed to the employees before the election. The Employer also submitted campaign material referred to here as Exhibit C, to which was attached Exhibit G. The Regional Director overruled Objections 1 through 3 insofar as they were ''specifically addressed'' by the Petitioner, but then considered whether Exhibits C and G were objectionable.[2]

Exhibit C is a letter dated May 24, 1989, which the Employer distributed to the employees during the critical period. The last paragraph exhorts employees to vote ''NO'' to, among other things, ''possible loss of your job in an economic strike.''

Exhibit G has the caption ''QUESTIONS AND ANSWERS.'' Among the questions and answers is the following:

> Question: Can an employee lose his job if a union calls a strike?
>
> Answer: Yes. Under the law, if a union calls a strike to force the company to agree to their [sic] demands, the company is free to replace striking employees. This means that after the strike is over, the employee may no longer have a job. The law does not force the company to bring back the employee unless his replacement quits. During an economic strike the striker remains an employee, unless fired for misconduct, with a right to reinstatement under certain conditions.

The Regional Director correctly noted that an employer may truthfully inform employees that economic strikers are subject to permanent replacement but may not threaten that strikers would be deprived of their rights as detailed in *Laidlaw Corp*.[3] He also explained that an employer's statements concerning employees' job status after a strike that are consistent with the law cannot be found to have restrained or coerced employees under the Act.[4]

Applying that test, the Regional Director found that Employer Exhibits C and G both contain statements to the effect that employees can lose their jobs if the Union calls a strike. He then found that such statements are not consistent with the law.[5] He further found that in Exhibit G the answer to question 3 creates an ambiguity because the answer states an unequivocal ''Yes'' to the question, ''Can an employee lose his job if a union calls a strike?'' and ''then lapses into equivocation.'' The first full sentence of the answer states that the law does not force the Company to bring back an economic striker ''unless his replacement quits.'' The answer concludes with a statement that ''During an economic strike the striker remains an employee, unless fired for misconduct, with a right to reinstatement under certain conditions.'' In the Regional Director's view, ''the use of the phrases [sic] '*his replacement*' and '*during*' an economic strike'' in the context of the Employer's leaflets and mailings reasonably could lead employees to conclude that strikers ''would risk termination unless *their specific replacements* quit or that they no longer would have employee status following the termination of an economic strike.'' (Emphasis in original.) He therefore found the material objectionable and set aside the election. We disagree.

As noted by the Regional Director, an employer does not violate the Act by informing employees that economic strikers are subject to permanent replacement, even if he does not fully detail their rights under *Laidlaw*, so long as the employer does not threaten that employees will be deprived of those rights.[6]

[1] In the absence of exceptions, we adopt the Regional Director's recommendations that the remainder of Objections 1, 2, and 3 and Objections 4, 5, and 6, in their entirety, be overruled.

[2] See *American Safety Equipment Corp*., 234 NLRB 501 (1978).

[3] 171 NLRB 1366, 1369 (1968), enfd. 414 F.2d 99 (7th Cir. 1969). The Board there held that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: ''(1) remain employees; and (2) are entitled to full reinstatement upon the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proving that the failure to offer full reinstatement was for legitimate and substantial business reasons.''

[4] *Eagle Comtronics*, 263 NLRB 515 (1982).

[5] The Regional Director relied on *Harrison Steel Castings Co*., 262 NLRB 450 (1982), enfd. 728 F.2d 831 (7th Cir. 1984); *Mead Nursing Home*, 265 NLRB 1115 (1982); *Webel Feed Mills & Pike Transit Co*., 217 NLRB 815 (1975); *Hicks-Ponder Co*., 186 NLRB 712 (1970), enfd. 458 F.2d 19 (5th Cir. 1972).

[6] *Eagle Comtronics*, supra. The Board in *Eagle* distinguished *Webel Feed Mills & Pike Transit Co*., supra, and *Hicks-Ponder Co*., supra, by noting that in both those cases the employers went beyond informing the employees of the risk of being permanently replaced by telling them they would permanently lose their jobs.

We do not agree with the Regional Director that the Employer here overstepped the narrow line between warning employees of the possible employment consequence of striking and threatening a loss of jobs. In an analogous case, *John W. Galbreath*,[7] an employer pamphlet containing the following statement was found unobjectionable:

> Question: You mean strikers can lose their jobs?
>
> Answer: You bet they can. However, they are not discharged, technically speaking. But they're not working . . . .

The Board found that while the employer's statement spoke in terms of job loss, it also stated that employees are ''not discharged, technically speaking, [b]ut they're not working.'' The employer's qualification that the employees are ''not discharged,'' the Board concluded, implied that the economic strikers retained their status as employees.

[7] *John W. Galbreath & Co.*, 288 NLRB 876 (1988).

Here also, although the Employer referred to job loss, it also clearly stated that ''the striker remains an employee, unless fired for misconduct, with a right to reinstatement under certain circumstances.'' As the Board observed in *John Galbreath*, the employees may be left somewhat puzzled about their rights as economic strikers, but the Employer did inform them that they would remain employees. Although the Employer's statements were not a comprehensive recitation of the rights of economic strikers, they did not constitute threat of job loss and, thus, were not objectionable. We will, therefore, overrule in their entirety Objections 1, 2, and 3, and certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for United Paperworkers International Union, AFL–CIO, CLC, and that it is not the exclusive representative of the bargaining unit employees.